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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,632	07/25/2005	Mikael Hillforth	36211	6374
23589	7590	10/12/2010	EXAMINER	
Hovey Williams LLP 10801 Mastin Blvd., Suite 1000 Overland Park, KS 66210			SANDERSON, JOSEPH W	
			ART UNIT	PAPER NUMBER
			3644	
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			10/12/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,632

Applicant(s)

HILLFORTH, MIKAEL

Examiner

Joseph W. Sanderson

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-6, 9, 10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 9, 10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-6, 9, 10 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt (US 5 673 647) in view of Frey et al. (EP 0 561 071).

Regarding claim 1:

Pratt discloses an apparatus for detecting an animal having a body part and a head part (abstract; cattle), comprising: an animal passage extending in a transport direction, said passage being defined by a first enclosure member and a second enclosure member (Fig 11A), which members are arranged on a respective side of the passage and extend substantially in parallel to said transport direction, and a sensor device which is arranged to sense the animal in the passage (Figs 20A and 20B; col 33, lines 48-67), characterized in that wherein the sensor device is arranged to sense a parameter regarding measurements (col 6, lines 38 and 62) at a determined position in the passage.

Pratt discloses measuring dimensions of each animal via a sensor arranged at a determined position in the passage and the sensor device is arranged to produce a signal when the parameter indicates that the width of the animal is less than a predetermined value at the

predetermined position (col 7, lines 30-35 teaches that based on the size of the animal it is categorized and ends up in different pens so the signal produced by the sensor device is that the animal ends up in a particular pen; col 44, line 40, applicant has not claimed the condition or what type of signal and Pratt teaches a visual signal by sorting into various lots based on where the animal falls in relation to a predetermined parameter e.g. weight, size, ownership, etc).

Pratt discloses a controlling processor (abstract; computer system), but does not explicitly disclose that the parameter is related to the width of the animal and the control member being arranged to count the animals passing the animal passage in response to the sensing of the sensor device.

Frey teaches that sensor devices arranged transversely in a passage and arranged to sense a dimension parameter seen in a determined direction and to produce a signal when the parameter indicates that the dimension is less than a predetermined value is old and notoriously well-known. Frey teaches it is notoriously well-known to utilize a control member connected to the sensor device, the control member being arranged to count in response to the sensing of the sensor device. (abstract; page 2, lines 11 and 51; page 4, line 26; Fig.8).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Pratt with the teachings of Frey as a management measure to obtain accurate information relating to the flow as taught by Frey (Frey, page 4, lines 13-14). The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results. Although Frey teaches measuring the height it would have been obvious to one of ordinary skill in the art to further modify the teachings at the time of the invention by measuring width since it is "obvious to try" choosing from a finite number of

identified, predictable solutions with a reasonable" expectation of success, and since width is merely height in a horizontal direction.

Pratt as modified renders the sensor device comprising at least a first sensor and a second sensor, wherein the first sensor is arranged to sense the presence of the animal at a first point of the passage and wherein the second sensor is arranged to sense the presence of the animal at a second point of the passage (Fig 11A, 384, 386 and 388).

Pratt as modified appears to render the first point and the second point both located at the determined position with regard to the transport direction but spaced apart from each other with a distance, wherein said distance is larger than the width of the head part, but is silent on the width being smaller than the width of the body part of an animal of a normal size to be guided through the animal passage, but is silent on explicitly teaching the spacing.

However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely a shift in location of a known element performing the same intended function in a more confined space [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)]. Further, the transversely arranged sensors of one embodiment of Frey are located 18 inches apart (col 7, lines 9-11), which renders spacing wider than the head but not as wide as the body, to ensure detection while minimizing the number of devices used (col 7, lines 6-9). It would therefore have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Pratt with this spacing teaching of Frey to minimize devices while still detecting passage.

The additional limitations of “thus producing signals...” (lines 19-20) and “thus in response to the signals” (lines 32-33) are simply recitations of the effects of the other limitations. Thus, if the other limitations are provided, these limitations are met.

Regarding claims 4 and 5:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders measuring, wherein the determined direction is a substantially vertical direction; determined direction is a substantially vertically downward direction (Frey, page 5, lines 56-58).

Regarding claim 6:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders the determined direction as a substantially horizontal direction due to the modification to sense width, which is a horizontal measurement.

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders the first point located in the proximity of the first enclosure member whereas the second point is located in the proximity of the second enclosure member (Figs 11A and 12A).

Regarding claim 10:

The discussion above regarding claim 1 is relied upon.

Pratt as modified does not render the first sensor and the second sensor both provided above the passage to sense the animal passing below the respective first and second sensors.

Frey teaches using sensors above the passage (Figs 1 and 2).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely shifting the location of a known elements performing the same intended function for an efficient use of space, to prevent damage caused by the animal kicking and for more accurate sensing [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claims 13-16:

The discussion above regarding claims 1, 4 and 9 is relied upon.

Pratt as modified renders a gate device (Figs 2 and 5) arranged in the passage to take one of an open position and a closed position and controlled by the controller.

Response to Arguments

3. Applicant's arguments filed 2 June 2010 have been fully considered but they are not persuasive.

In response to applicant's arguments against Pratt, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is (571)272-6337. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 300 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy D. Collins can be reached on (571)272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W. S./
Examiner, Art Unit 3644

/T. T. N./
Primary Examiner, Art Unit 3644